STATE OF MICHIGAN

COURT OF APPEALS

LABELLE MANAGEMENT, INC., DOUGLAS LABELLE, and BARTON LABELLE,

Plaintiffs-Appellees/Cross-Appellants,

and

BENNIGAN'S and STEAK & ALE OF MICHIGAN, INC.,

Intervening Plaintiffs-Appellees,

v

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant-Appellee,

and

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
March 2, 2006

No. 262072
Genesee Circuit Court
LC No. 02-074115-CK

Before: Cavanagh, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant Citizens Insurance Company of America (Citizens) appeals as of right from an order granting summary disposition in favor of plaintiffs Douglas LaBelle, Barton LaBelle, and LaBelle Management, Inc. We affirm.

The circumstances giving rise to this action for declaratory relief stem from an automobile accident involving Karen Martel and Cindy Allen. It is not disputed that at the time of the accident Allen was intoxicated, in part, as a result of drinking alcohol at a Bennigan's

restaurant being managed by plaintiffs pursuant to a contract between plaintiffs and the owner of the restaurant, intervening-plaintiff Steak & Ale of Michigan (Steak & Ale). Following the accident, Martel sued Steak & Ale for violations of the Michigan Liquor Control Code, MCL 436.1101 *et seq*. Relying on an indemnification provision contained in its management agreement with plaintiffs, Steak & Ale in turn brought a third-party claim for indemnification by plaintiffs for any liability inuring to Steak & Ale from the suit by Martel.

Plaintiffs thereafter filed the instant action seeking a declaration that any obligation to indemnify Steak & Ale was covered under commercial and liquor liability policies of insurance issued to plaintiffs by defendant Liberty Mutual Insurance Company (Liberty Mutual), the terms of which had been expressly incorporated into a supplemental "excella" policy issued to plaintiffs by Citizens. Although Citizens and Liberty Mutual both initially disputed that they were required to cover plaintiffs under the terms of the Liberty Mutual policies, Liberty Mutual eventually changed its position and agreed to indemnify and defend plaintiffs against Steak & Ale's third-party indemnification claim. However, arguing that it was not bound by Liberty Mutual's interpretation of its policies, Citizens continued to deny plaintiffs coverage under its supplemental excella policy. The trial court granted summary disposition in favor of plaintiffs, reasoning that the plain terms of Liberty Mutual's liquor liability policy required that Citizens indemnify plaintiff against Steak & Ale's claim for indemnification.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). Interpretation of a contract is a question of law also reviewed de novo on appeal. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Consequently, summary disposition should be granted under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the opposing party, the record leaves open an issue upon which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

An insurance policy is merely a contract between the parties. *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 471; 688 NW2d 523 (2004). Generally, the purpose of contract interpretation is to enforce the parties' intent, and if a policy's language is unambiguous, interpretation is limited to the actual words used. *Burkhardt*, *supra* at 656. Accordingly, a clear contract must be enforced according to its terms. *Id*. However, if provisions of a contract irreconcilably conflict, the contractual language is ambiguous, and the ambiguous contractual language presents a question of fact to be decided by a jury. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467, 469; 663 NW2d 447 (2003). Unless otherwise defined in the policy, contractual language is given its plain and ordinary meaning. *English*, *supra* at 471- 472.

As previously noted, the terms of Liberty Mutual's liquor liability policy were incorporated into Citizens' coverage. After a review of the liquor liability policy, we find no ambiguities in the relevant language. Therefore, our interpretation of the coverage afforded under the policy must be limited to the actual words used in the policy. *Burkhardt*, *supra*.

The policy language at issue provides, in relevant part, that Liberty Mutual

> will pay those sums that the insured becomes legally obligated to pay as damages because of 'injury' to which this insurance applies *if liability for such 'injury' is imposed on the insured by reason of selling, serving or furnishing of any alcoholic beverage.* We will have the right and duty to defend the insured against any 'suit' seeking those damages. However, we will have no duty to defend the insured against any 'suit' seeking damages for 'injury' to which this insurance does not apply. . . . [(Emphasis added.)]

At issue is whether plaintiffs' liability in this matter was "imposed on [plaintiffs] by reason of selling, serving or furnishing of any alcoholic beverage." Citizens contends that plaintiffs' liability arises from its contractual indemnification agreement with Steak & Ale, and not "by reason" of the selling or furnishing of any alcoholic beverages. Because the relevant policy language fails to plainly recognize such a distinction, we disagree. Indeed, if Liberty Mutual sought to limit plaintiffs' coverage under the liquor liability policy to liability arising solely from the specific act of selling, serving, or furnishing alcohol, it could have easily done so as follows: "if liability for such 'injury' is imposed on the insured by reason of [*the insured's*] selling, serving or furnishing of any alcoholic beverage." Liberty Mutual did not, however, do so. Liberty Mutual could have also included within the policy an exclusion of the insured's liability to indemnify a third party. Again, however, such language does not appear in the policy. See *English*, *supra* at 472 ("[i]f an insurer intends to exclude coverage under certain circumstances, it should clearly state those circumstances in the section of its policy entitled 'Exclusions.'" (citations and internal quotation marks omitted)). Plaintiffs are, therefore, covered under the plain terms of the Liberty Mutual liquor liability policy, and in turn under the supplemental excella policy issued to them by Citizens. Summary disposition in favor of plaintiffs was, therefore, proper.

Because we conclude that the plain language of plaintiffs' liquor liability policy clearly requires Citizens to indemnify plaintiffs for their liability to Steak & Ale, we need not reach plaintiffs' claim on cross-appeal that defendant should be equitably estopped from denying coverage.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Jane E. Markey